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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,353	12/03/2003	Jean Norvell	FA/264	8602

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EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT PAPER NUMBER

1771

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/728,353

Applicant(s)

NORVELL ET AL.

Examiner

Ula C. Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/18/04, 6/29/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-43 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims of copending Application No. 11/003947. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 5-24, 26-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al. (US 6,511,927) in view of Campbell et al. (US 6,277,479). Ellis et al. (US 6,511,927) disclose a breathable waterproof laminate comprising a fabric bonded to an expanded polytetrafluoroethylene film layer (col 4, ln 1-8). The e-PTFE layer is characterized by a multiplicity of open, interconnecting voids (col 5, ln 50-41). The layers are adhered using adhesive (col 4, ln

17-19) applied discontinuously (col 4, ln 32-34). In addition, a hydrophilic polyurethane film is bonded to the e-PTFE layer (col 6, ln 47-59). A backing layer is also included in the laminate to protect the laminate from abrasion, thus meeting Applicant's limitation of a second textile material (col 8, ln 1-9). The laminate is used in outdoor garments (col 3, ln 41) and apparel, industrial, medical, and military applications (col 1, ln 21-33). The layers are combined using pressure supplied by rolls (col 6, ln 32-34). Ellis et al. disclose the claimed invention except for the teaching that the e-PTFE film has two regions of differing translucency formed by selectively compressing the polymer film.

Campbell et al. (US 6,277,479) disclose microporous films having zoned breathability used in garments and tents (col 5, ln 31-54). The nip pressure can be varied in order to further modify the breathability of the corresponding region of the film (col 9, ln 29-31). It would have been obvious to one having ordinary skill in the art to have used Campbell's teaching of varied pressure on different film zones on the e-PTFE film of Ellis et al, motivated by the desire to create a laminate having the desired breathability. It should be noted that Campbell's disclosure of varied pressure zones would result in differing translucencies as well in the PTFE film.

5. Claims 5 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al. (US 6,511,927) and Campbell et al. (US 6,277,479), as applied to claims 1 and 22 above, and further in view of Rechlicz et al. (US 5,032,450). Ellis et al. and Campbell et al. disclose the claimed invention except for the teaching that the film is adhered to the film by fusion bonding.

Rechlicz et al. (US 5,032,450) disclose a laminate comprising a microporous layer material bonded to a fabric layer (col 16, ln 3-15) via fusion bonding (col 16, ln 16-18). The laminate can be

used in garments and tents (col 17, ln 1-9). It would have been obvious to have used Rechlicz' fusion bonding on the laminate of Ellis et al. and Campbell et al., motivated by the desire to create a laminate that has decreased delamination.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UCR *UCR*

Ula Ruddock

Ula C. Ruddock
Primary Examiner
Tech Center 1700